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10/666,604	09/19/2003	Lewis J. Thomas III	2003P09373US	8555

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Siemens Corporation
Attn: Elsa Keller, Legal Administrator
Intellectual Property Department
170 Wood Avenue South
Iselin, NJ 08830

EXAMINER	
TRAN, TUYETLIEN T	

ART UNIT	PAPER NUMBER
2179	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/666,604	THOMAS, LEWIS J.	
	Examiner	Art Unit	
	TuyetLien (Lien) T. Tran	2179	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07 May 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-27* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-27* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This action is responsive to the following communication: Amendment filed 05/07/07.

This action is made final.

2. Claims 1-27 are pending in the case. Claims 1, 13 and 24 are independent claims.

Claims 2-4, 9, 14-16, 20 and 25 are amended claims.

Claim Rejections - 35 USC § 112

3. Applicant's amendment corrects the previous rejection and therefore the rejection is withdrawn.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1, 5-8, 10-13, 17-19, 21-24, 26 and 27 are rejected under 35 U.S.C. 102(e) as being anticipated by Sterritt (Pub No US 2004/0071038; hereinafter Sterritt).

As to claim 1, Sterritt teaches:

A method for displaying and/or manipulating medical image data (e.g., see [0002] and Fig. 1), the method comprising:

(a) providing a medical image viewer in compliance with a medical image standard (e.g., item 701 in Fig. 7 and items 104 in Fig. 5-6);

(b) providing a file in compliance with the medical image standard to the medical image viewer (e.g., see [0013] and Fig. 3), wherein the medical image standard specifies a first field for data not in compliance with the medical image standard and a second field for data in compliance with the medical image standard (e.g., e.g., see [0034] and [0039]), wherein the first field of the file comprises medical image data and the second field of the file comprises information that can be used to obtain software to at least one of display and manipulate the medical image data (e.g., see [0043] and Fig. 4);

(c) obtaining the software (e.g., a DICOM viewer application, see [0047]); and

(d) performing at least one of the following with the software: displaying the medical image data and manipulating the medical image data (e.g., step 810 in Fig. 8).

As to claim 13, Sterritt teaches:

A medical image viewer (e.g., see item 104 in Figs. 5-6) comprising:

a display device (e.g., see item 104 Fig. 1 and viewer display shown in Fig. 11);

a processor (e.g., see item 104 in Fig. 1 and [0033]); and

a storage device storing a file in compliance with a medical image standard (e.g., see [0013] and Fig. 3), wherein the medical image standard specifies a first field for data not in compliance with the medical image standard and a second field for data in compliance with the medical image standard (e.g., see [0034] and [0039]), wherein the first field of the file comprises medical image data and the second field of the file comprises information that can be used to obtain software to at least one of display and manipulate the medical image data (e.g., see [0043] and Fig. 4);

wherein the processor is operative to perform at least one of the following with the software: displaying the medical image data and manipulating the medical image data (e.g., step 810 in Fig. 8 and [0060]).

As to claim 24, Sterritt teaches:

A method for displaying and/or manipulating medical image data (e.g., see [0002] and Fig. 1), the method comprising:

(a) providing a DICOM-compliant medical image viewer (e.g., item 701 in Fig. 7 and items 104 in Fig. 5-6);

(b) providing a file in compliance with DICOM to the medical image viewer (e.g., see [0013] and Fig. 3), wherein the file comprises a DICOM private attribute field comprising non-DICOM-compliant medical image data and a DICOM standard attribute field comprising information that can be used to obtain software to at least one of display and manipulate the medical image data (e.g., see [0043] and Fig. 4);

(c) obtaining the software (e.g., a DICOM viewer application, see [0047]); and

(d) performing at least one of the following with the software: displaying the medical image data and manipulating the medical image data (e.g., step 810 in Fig. 8).

As to claim 5, Sterritt further teaches charging a fee to a user for the software (e.g., see [0017] and Fig. 7).

As to claims 6 and 17, Sterritt further teaches the medical image data comprises ultrasound data (e.g., see Fig. 3 and [0038]).

As to claims 7, 18 and 26, Sterritt further teaches the medical image data is selected from the group consisting of RF data, pre-scan converted data, pre-reconstruction data, and a three-dimensional data set (e.g., see Fig. 3 and [0038]).

As to claims 8 and 19, Sterritt further teaches the medical image data comprises DICOM (e.g., see [0013]).

As to claims 10 and 21, Sterritt further teaches displaying the medical image data (e.g., see step 810 in Fig. 8 and Fig. 11).

As to claims 11 and 22, Sterritt further teaches manipulating the medical image data (e.g., see step 810 in Fig. 8 and Fig. 11).

As to claims 12, 23 and 27, Sterritt further teaches the file is provided to the medical image viewer via one of the following: a network, removable media, and a wireless transmission (e.g., see [0042]).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 9 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sterritt (Pub No US 2004/0071038; hereinafter Sterritt).

As to claims 9 and 20, Sterritt teaches the limitations of claims 8 and 19 for the same reasons as discussed above. Sterritt does not mention the first field of the medical image standard comprising private attribute and the second field comprising a standard attribute. However, it would have been obvious to one skill in the art at the time the invention was made to realize these limitations because Sterritt suggests to the skill artisan that DICOM is both a protocol and a format for medical imaging equipment to communicate with each other, so that a Computer Tomography image could be viewed on a medical PC other than the single viewer; in other words, in order for image data that is created for a particular manufacturer or consortium of manufacturers, there is needed a medical image standard that comprise a DICOM private attribute, and wherein the second field of the medical image standard comprises a DICOM standard attribute (e.g., see [0039], [0043]). The motivation is to a standard for data created in different format can be understood across plurality of devices and still be able to maintain the quality of the original format (e.g., see [0039).

8. Claims 2-4, 14-16 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sterritt (Pub No US 2004/0071038; hereinafter Sterritt) in view of Pashupathy et al (Patent No 6078951; hereinafter Pashupathy).

As to claims 2, 14 and 25, Sterritt teaches the limitations of claims 1, 13 and 25 for the reasons as discussed with respect to claims 1, 13 and 25 above. Sterritt does not expressly teach that the information in the second field of the file comprises one of the following: a message instructing a user how to obtain the software, a link to a network location storing the software, and an identification of a network location storing the software.

Pashupathy teaches the client computer system determines a file type of the file by decoding the file suffix of the file; wherein the file suffix of a file indicates the format that the file

is in (e.g., see col. 6 lines 35-42 and step 601 in Fig. 6) and instructing a user how to obtain the viewer software to view the file (e.g., steps 605-606 in Fig. 6).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the method of instructing a user how to obtain the software to view a file as taught by Pashupathy to the method of displaying and manipulating the medical image data as taught by Sterritt to include the instruction on how to obtain the viewer software in the second field because Sterritt suggests to the skilled artisans that modality-specific or viewer-specific information can be appended to the header of a DICOM compatible file (e.g., see [0043]). The motivation to combine the teachings of Pashupathy with Sterritt is to allows a physician to have access quickly to the entire data set and allow for rapid change from image to image efficiently even if the physician's computer does not have the software to view it.

As to claims 3 and 15, Sterritt teaches the limitations of claims 1 and 13 for the reasons as discussed with respect to claims 1 and 13 above. Sterritt does not expressly teach the information in the second field of the file comprises a link to a network location storing the software, and wherein the software is obtained in (c) in response to a user selecting the link. Pashupathy teaches the information in the second field of the file comprises a link to a network location storing the software, and wherein the software is obtained in (c) in response to a user selecting the link (e.g., see col. 7 lines 1-16). Thus, combining Pashupathy and Sterritt would meet the claimed limitation for the same reasons as discussed with respect to claims 2 and 14 above.

As to claims 4 and 16, Sterritt teaches the limitations of claims 1 and 13 for the reasons as discussed with respect to claims 1 and 13 above. Sterritt does not expressly teach wherein the information in the second field of the file identifies a network location storing the software,

and wherein the software is obtained in (c) without user action. Pashupathy teaches wherein the information in the second field of the file identifies a network location storing the software, and wherein the software is obtained in (c) without user action (e.g., see col. 7 lines 1-4). Thus, combining Pashupathy and Sterritt would meet the claimed limitation for the same reasons as discussed with respect to claims 2 and 14 above.

Response to Arguments

9. Applicant's arguments filed 5/07/07 with regarding to claims 1, 13 and 24 have been fully considered but they are not persuasive.

Applicant's arguments that the prior art of Sterritt does not teach non-DICOM-compliant medical image data nor information that can be used to obtain software (e.g., see Applicant's remark page 9, Para 3, lines 9-13).

Examiner respectfully disagrees and submits that the features upon which applicant relies (i.e., provide non-DICOM-compliant medical image data and information that can be used to obtain software) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In this case, a file in compliance with DICOM is provided to the medical image viewer; the non-DICOM-compliant medical image data information that can be used to obtain software are part of the file. In addition, the prior art of Sterritt teaches data from a variety of sources and modalities including an image scanner, a network transporting DICOM-format data from a modality (X-ray, CT scan, NMR scanner, etc.), document scanner, text data are used to form the data into appropriate files in compliance with DICOM format (e.g., see [0013]). Sterritt further teaches that DICOM can support JPEG and other imaging standards within its framework and that while a reader/viewer

for DICOM format data is described, a different format, or multiplicity of formats can be supported by the viewer of Sterritt's invention (e.g., see [0044] [0062]). Sterritt additionally teaches that information included in the file can comprise the information that allows the creation of an "association" within a viewer (e.g., see [0043]). In other words, the file in compliance with DICOM does comprise non-DICOM-compliant medical image data and information that can be used to obtain software.

Applicant's arguments that the file in Sterritt is not provided to a medical image viewer but instead contains a medical image viewer (e.g., see Applicant's remark page 10, Para 2, lines 9-11).

Examiner respectfully disagrees and submits that the prior art of Sterritt teaches that the file does not contain the medical image viewer and that the medical image viewer can be pre-installed or pre-existed in the computer that the file is provided for (e.g., see [0048], [0051])

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

It is noted that any citation to specific, pages, columns, lines, or figures in the prior art references and any interpretation of the references should not be considered to be limiting in any way. A reference is relevant for all it contains and may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art. In re Heck, 699 F.2d 1331, 1332-33,216 USPQ 1038, 1039 (Fed. Cir. 1983) (quoting In re Lemelson, 397 F.2d 1006,1009, 158 USPQ 275,277 (CCPA 1968)).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TuyetLien (Lien) T. Tran whose telephone number is 571-270-1033. The examiner can normally be reached on Mon-Friday: 7:30 - 5:00 (every other Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 571-272-4847. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

T.T
7/06/2007

Lien Tran
Examiner
Art Unit 2179

WEILUN LO
SUPERVISORY PATENT EXAMINER